No. 12039

In the United States Court of Appeals for the Ninth Circuit

TIGHE E. WOODS, HOUSING EXPEDITER, OFFICE OF THE HOUSING EXPEDITER, APPELLANT

v.

JOHN MCCORD AND FLORENCE MCCORD, APPELLEES

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION

APPELLANT'S BRIEF

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STATEMENT OF JURISDICTION

This is an appeal by the Housing Expediter from a final judgment of the United States District Court for the Southern District of California, Central Division, denying restitution of alleged rent overcharges collected in violation of the Emergency Price Control Act, as amended,[1] (50 U. S. C. A. App. 901, et seq.), and of the regulation issued pursuant thereto, the Rent Regulation for Housing[2] (10 F. R. 13528),

[1] Hereinafter referred to as the "Act."

[2] Hereinafter referred to as the "Regulation."

in an action brought by the Housing Expediter pursuant to Section 205 (a) of the Act.[3] Judgment was entered on April 30, 1948 (R. 47). Notice of appeal was filed on June 28, 1948 (R. 47). The jurisdiction of this Court is invoked under Section 1291 of the Judicial Code (28 U. S. C. A. 1291).

STATUTES AND REGULATIONS INVOLVED

The pertinent provisions of the applicable statutes and regulations appear in the Appendix.

FACTS

The material facts in this case are not in dispute. Defendants were the owners and landlords of housing accommodations located at 948 South Figueroa Street, Los Angeles, California, known as the Belmont Apartments, within the Los Angeles Defense-Rental Area. As such, these premises were subject to the Act and the regulations issued thereunder. Under the regulations, the maximum rent for any housing accommodation is the rent in effect on the maximum rent date (See § 1388.284 (a) of Maximum Rent Regulation 53, Appendix, *infra,* p. 31; § 4 (a) of the Rent Regulation for Housing, Appendix, *infra,* p. 33 and § 825.4 (a) of the Controlled Housing Rent Regulation, Appendix, *infra,* p. 33).

On or about December 15, 1942, defendants filed with the Office of Price Administration a registration statement for the Belmont Apartments on the form

[3] Although the complaint sought treble damages under Section 205 (e) (R. 2), in addition to restitution under Section 205 (a) of the Act, plaintiff did not pursue and abandoned its prayer for statutory damages under Section 205 (e).

designated for use by hotels and rooming houses (R. 23, 24, Plaintiff's Exhibit 1, R. 78). The accommodations should have been registered under the housing regulation then in effect[4] unless they qualified for registration under the then operative hotel and rooming house regulation.[5] At that time all housing accommodations in the Los Angeles Defense-Rental Area were subject to Maximum Rent Regulation 53 under § 1388.281 (a) of that regulation (Appendix, *infra,* p. 30) unless specifically exempted by § 1388.281 (b) (Appendix, *infra,* p. 31). The latter section exempted from Maximum Rent Regulation 53 "rooms or other housing accommodations within hotels or rooming houses" provided that the express consent of the Administrator had been obtained. "Hotels" were defined by the regulation in terms of rooms "used predominantly for transient occupancy" (§ 1388.293 (a) (11), Appendix, *infra,* p. 31) and "rooming house" in terms of "rooms not constituting an apartment" which were rented on a short term basis (§ 1388.293 (a) (12), Appendix, *infra,* p. 31). According to defendant's own testimony, the majority of the units in the particular premises had neither been rented prior to nor on the freeze date on a transient basis (R. 81). Defendant also testified that seventy-nine out of the total of eighty-five units comprising the Belmont Apartments were self-contained units with bath and

[4] Maximum Rent Regulation 53, "Housing Accommodations Other Than Hotels and Rooming Houses," Vol. 7, No. 210, Fed. Reg. at p. 8596 (Oct. 24, 1942).

[5] Maximum Rent Regulation 54A, "Hotels and Rooming Houses," Vol. 7, No. 210, Fed. Reg. at p. 8602 (Oct. 24, 1942). Defendants filed originally under this regulation.

kitchen facilities, that is, apartments. The foregoing facts were confirmed by plaintiff's inspection of the premises (R. 122). Moreover, the consent of the Administrator to register under the hotel and rooming house regulation was not obtained by defendants (R. 93), as expressly required by the regulation. Nevertheless, as shown above, defendants registered their accommodation on the form used for hotels and rooming houses. The rents which defendants could lawfully collect for the accommodations under the hotel regulation on a transient basis greatly exceeded the rents which could lawfully be obtained for them on a monthly basis under the housing regulation.

In July 1944, John McCord advised the Office of Price Administration by letter that he had been operating under the hotel and rooming house regulation and requested permission to continue to operate under that regulation (Plaintiff's Exhibit 3, R. 132). Plaintiff then endeavored to obtain from defendants information concerning their rental practices during the base period for the particular accommodations in order to ascertain the propriety of their registration. Beginning with a request dated October 20, 1944, to defendant McCord to supply evidence of his base period rentals (Plaintiff's Exhibit 3, R. 131), plaintiff wrote to defendant without success on eight different occasions seeking to obtain the requested data.[6] Finally,

[6] While plaintiff's unsuccessful attempts to elicit the requested information are fully discussed *infra*, pp. 18–22 under Point III, the eight letters dispatched by plaintiff to defendant are as follows:

(1) October 20, 1944, Request for information (R. 131).

(2) December 6, 1944, Request for information with questionnaire (R. 130).

on August 9, 1945, a formal order was issued by the Area Rent Director denying defendants' petition for registration under the hotel regulation (Plaintiff's Exhibit 3, R. 119). No administrative review of this order was ever sought by defendant. This order, too, was ignored by defendants as well as plaintiff's subsequent letter of September 9, 1945, directing defendants to re-register under the housing regulation (Plaintiff's Exhibit 3, R. 135).

On December 13, 1945, plaintiff filed an injunction suit to compel re-registration (R. 31, 92). As a result of the injunction suit (R. 31), defendants re-registered the premises on February 14, 1946, under the housing regulation (Plaintiff's Exhibit 2, R. 117). The re-registration statements accurately reported the rents collected by defendants on the maximum rent date (Par. 8–25 of Plaintiff's Request for Admissions, R. 8–12, Defendant's Answer thereto, R. 18).

This suit was filed by plaintiff on March 27, 1947 (R. 7), under Section 205 (a) of the Act seeking restitution to the tenants of the alleged excessive rents collected by defendants during the period from November 1943 to March 1946 on the basis of the transient rentals contained in its first registration. A

(3) January 2, 1945, Follow-up on December 6 letter (R. 129).
(4) February 16, 1945, Request for additional information (R. 128).
(5) March 13, 1945, Follow-up on February 16 letter (R. 127).
(6) April 10, 1945, Requesting McCord to confer with OPA (R. 127).
(7) May 10, 1945, Request for information (R. 126).
(8) May 26, 1945, Follow-up requesting information (R. 125).

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statement of the several units, tenants, maximum legal rents, amounts of rents actually collected, periods of overcharges and total overcharges, was made a part of the complaint (R. 6–7). Defendants' answer denied the overcharges; pleaded the one-year statute of limitations in Section 205 (e); asserted that the violations were not wilful or the result of failure to take practicable precautions against the commission thereof; and that plaintiff was not authorized to prosecute the action (R. 8–9).

Plaintiff requested defendants to admit that the rents filed by defendants on February 14, 1946, upon the re-registration of the premises reported the true freeze date rents on the particular premises (Plaintiff's Request for Admissions, Par. 8–25, R. 12–16). This was admitted by defendants (Defendants' Answer to Plaintiff's Request for Admissions, R. 18). Plaintiff further requested defendants to admit the allegations of the complaint enumerating the rents actually paid, the periods of overcharges and the names of the tenants overcharged (Plaintiff's Request for Admissions, Par. 27–28). R.16 All these were also admitted by defendants except as to overcharges alleged beyond March 22, 1946,[7] and as to the overcharges alleged for Units Nos. 207, 210, 304, 407, 510, and 511 for the period from November 1943 to March 1946 for which defendants had already made reimbursement to the tenants[8] (Defendant's Answer to Plaintiff's

[7] The complaint alleged no overcharges beyond March 22, 1946 (see Schedule of Overcharges, Appendix, *infra*, p. 36). Accordingly, defendants' failure to admit overcharges beyond that date is wholly lacking in relevancy.

[8] At the trial, plaintiff stipulated that the seven overcharges alleged in the complaint with respect to these six units be stricken on

Request for Admissions (R. 18–19)). Thus all of the overcharges as alleged in the complaint, with the exception of the seven violations for which defendants had already made reimbursement to the tenants, were fully admitted by defendants even prior to trial.

At the trial of the cause, the alleged overcharges were further corroborated by the testimony of defendant Florence McCord. She testified that most of the accommodations were rented during the freeze period on a monthly basis (R. 81) as evidenced by the second registration statements (R. 117, 119) and not at the transient rates contained in the first registration.[9] Mrs. McCord testified further that defendants had rented the accommodations during the period between December 15, 1942, the date of the first registration, and February 14, 1946, the date of the second registration, on the basis of the transient rates specified in the first registration (R. 78).

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the basis of restitution in the amount of $3,428.48 of the overcharges by the defendants to the tenants as follows (R. 66):

(1) Unit 207, H. Herrmann (alleged overcharge $608.52).

(2 and 3) Unit 210, Allen D. Bull (alleged overcharges $196.80 and $970.20).

(4) Unit 304, M. P. Anderson (alleged overcharge $55.00).

(5) Unit 407, Fern Boltz (alleged overcharge $535.35).

(6) Unit 510, Eileen J. Meloy (alleged overcharge $908.85).

(7) Unit 511, H. H. Tubbs (alleged overcharge $149.76).

As a result of the repayment by defendants of $3,428.48 to the tenants, a total of $2,106.24, remained in issue in this suit (R. 6, 7).

[9] This testimony corroborated defendants' answer to the same effect made to plaintiff's Request for Admissions, that the rentals specified in the second registration statements truthfully depicted the actual rents collected on the maximum rent date (Par. 8–25 of Plaintiff's Request for Admissions, R. 12–16, Defendants' Answer thereto, R. 18).

Despite this unqualified admission of overcharges both prior to and at the trial, the District Court rendered judgment in favor of defendants. It entered Findings of Fact which in pertinent part are as follows (R. 43–45):

* * * * *

(1) Finding of Fact III found to be untrue the allegations contained in paragraph VI of the complaint, that the defendants received rents in excess of the maximum rents established by the Rent Regulation.

* * * * *

(2) Finding of Fact VIII found that the action had been barred by the one-year statute of limitations provided for in Section 205 (e) of the Act.

(3) Findings of Fact IX found that defendants' actions were neither wilful, fraudulent nor the result of failure to take practical precautions.

(4) Finding of Fact X found that plaintiff had been guilty of unreasonable delay in filing suit and that defendants had been irreparably injured thereby.

(5) Finding of Fact XI found that plaintiff should be denied relief because of delay and irreparable injury to defendants.

(6) Finding of Fact XII found that defendants were not violating the law and that the Court should not exercise its equitable jurisdiction nor order restitution.

(7) Finding of Fact XIII found that defendants were not guilty of fraud or concealment and that plaintiff had been guilty of such

delay as to make it inequitable to make any other order against defendants.

In all of these respects, the Court below was in error. In the argument that follows, we will consider all of these Findings in the above order except that Findings X, XI, and XIII will be considered together since each of these Findings relate to the charge that the Expediter was guilty of unreasonable delay in prosecuting this suit.

SPECIFICATIONS OF ERROR

1. The lower Court erred in holding that defendants did not charge rentals in excess of the maximum rentals established by the rent regulation.

2. The lower Court erred in holding that the one-year statute of limitations provided for in Section 205 (e) of the Act barred restitution in an action brought by the Housing Expediter under Section 205 (a) of the Act.

3. The lower Court erred in holding that plaintiff should be denied relief because of its unreasonable delay in filing suit and because of irreparable injury to defendants.

ARGUMENT

I

The lower Court erred in holding that defendants did not charge rentals in excess of the maximum rentals established by the rent regulation

The District Court found that "the allegations contained in paragraph VI of Plaintiff's Complaint are untrue" (Finding of Fact III, R. 43). Inasmuch as paragraph VI of the complaint contained the allegations as to overcharges, the lower Court's finding was

to the effect that there were no overcharges in the case. This finding is wholly inconsistent with the applicable provisions of the rent regulation and ignores defendants' admissions of overcharges made both prior to and at the trial. It is submitted that this finding is error.

It should be pointed out at the outset that the maximum rent which a landlord is permitted to charge is not determined by the registration statement filed by him with the Expediter. Maximum rents for housing accommodations rented on the maximum rent date are the rents actually charged for the accommodations on the maximum rent date (see § 1388.284 (a) of Maximum Rent Regulation 53, Appendix, *infra,* p. 31; § 4 (a) of the Rent Regulation for Housing, Appendix, *infra,* p. 33; and § 825.4 (a) of the Controlled Housing Rent Regulation, Appendix, *infra,* p. 33).

Therefore, to determine what the maximum legal rents were for the particular accommodations, we must ascertain the rents in the base period. The true picture of defendants' rentals during the crucial base period was portrayed in the re-registration statements filed on February 14, 1946, under the housing regulation. This fact was admitted by defendants in their answer to plaintiff's request for admissions (R. 18, Par. 8–25 of Plaintiff's Request for Admissions, R. 11–16). By their answer, defendants admitted that the monthly rentals specified in their second registration, not the transient rentals set forth in their first registration, were the rents actually in effect on the maximum rent date in 1942. These rents, then, became the maximum legal rents under the regulation.

Consequently, if the overcharges had not already been admitted by defendants prior to the trial, the testimony of defendant, Mrs. McCord, at the trial, that during the period between the first registration in December 1942 and the second registration in February 1946, the rents collected from the premises were the transient rentals specified in the first registration (R. 78), would have established the overcharges alleged. However, as discussed *supra,* p. 6, the specific overcharges as alleged in the complaint had already been admitted by defendants in their answer to plaintiff's request for admissions (R. 18).

In view of the formula set forth in the regulation for determining maximum rents and in view of defendants' admissions both prior to and at the trial, there can be no question of overcharges in this case. Only by refusing to accept the freeze date concept of maximum rents specified in the regulation, could the lower Court have arrived at its conclusions that there were no overcharges. Of course, the District Court was bound to give full effect to the regulation in all respects and for all purposes (*Woods* v. *Stone,* 333 U. S. 472, 68 S. Ct. 624; *Woods* v. *Hills,* 334 U. S. 210, 68 S. Ct. 992; *Shyman* v. *Fleming,* 163 F. 2d 461 (C. C. A. 9), certiorari denied 332 U. S. 844, 68 S. Ct. 266; *Fleming* v. *Dashiel,* 161 F. 2d 612 (C. C. A. 9); *United States* v. *Rosenzweig,* 144 F. 2d 30 (C. C. A. 9), certiorari denied 323 U. S. 764, 65 S. Ct. 117; *Taylor* v. *Bowles,* 147 F. 2d 824 (C. C. A. 9); *Bowles* v. *Sanden & Ferguson Co.,* 149 F. 2d 320 (C. C. A. 9)). In *Shyman* v. *Fleming, supra,* where appellant argued that the Administrator was without power to establish maximum

prices by the formula set forth in the regulation, this Court stated as follows (at p. 463):

> A short answer to the argument is that it amounts to an attack on the validity of the regulation cognizable only in the Emergency Court of Appeals.

Futhermore, the failure of the District Court to find overcharges in the case not only repudiates defendants' admissions to the contrary and the formula in the regulation for establishing maximum rents, but constitutes an attack upon the validity of the August 9, 1945 Order of the Area Rent Director denying defendants' petition to come under the Hotel and Rooming House Regulation. No administrative appeal was ever taken by defendants from this Order, even though ample provision for administrative review of the order was made in Sections 1300.209 (a) and 1300.215 of Revised Procedural Regulation 3 (Appendix, *infra,* p. 34). The finding of no violations by the lower Court is obviously based upon the proposition that the first registration was proper. Such a holding necessarily denies any affect whatsoever to the August 9 Order of the Area Rent Director, the conclusiveness of which was binding upon that Court (*Woods* v. *Stone, supra; Woods* v. *Hills, supra;* see, too, cases decided by this Court, *supra,* p. 11).

Nor could the filing of the improper registration in December 1942 confer any greater rights on defendants than if they had filed a proper registration at that time. To accept the view that an improper registration statement filed by a landlord establishes lawful rentals, would place a premium upon misinforma-

tion. Under the regulation the landlord is required, for information purposes only, to specify in the registration the rents in effect during the base period. But regardless of what he states in his registration, maximum rents are and have always been defined in the rent regulations as the rents actually in effect for the accommodations on the maximum rent date. As the Court of Appeals for the Second Circuit recently said in *Woods* v. *Forest Hills South, Inc.,* No. 21172, decided January 11, 1949, as yet unreported, speaking through Judge Hand:

> The [registration] certificates in no way bind the Housing Expediter and at best can only furnish ex parte information on which corrective measure may be used.

And as the Court of Appeals for the First Circuit said in *Kalwar* v. *McKinnon,* 152 F. 2d 263 through Judge Magruder (at p. 263):

> If he specifies it incorrectly, he does not thereby establish the maximum rent at the asserted figure.

See too, *Saker* v. *Woods,* 169 F. 2d 131, 134 (E. C. A.).

On the basis of the foregoing, it is clear that the District Court erred in holding that defendants were not guilty of collecting excessive rents.

II

The lower court erred in holding that the one-year statute of limitations provided for in Section 205 (e) of the Act barred restitution in an action brought by the Housing Expediter under Section 205 (a) of the Act

The District Court found as a fact (Findings of Fact VI and VIII, R. 43, 44) that the instant action

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was barred by the expiration of the statute of limitations in Section 205 (e). This holding is directly opposed to that of two Circuit Courts of Appeals on the precise issue (*Co-efficient Foundation, Inc.* v. *Woods,* 171 F. 2d 691 (C. C. A. 5); *Creedon* v. *Randolph,* 167 F. 2d 918 (C. C. A. 5); *Blood* v. *Fleming,* 161 F. 2d 292 (C. C. A. 10)).

In *Co-efficient Foundation, Inc.* v. *Woods, supra,* the Court of Appeals for the Fifth Circuit, in affirming a judgment of restitution under Section 205 (a) and of double damages recovered under Section 205 (e), ruled squarely that the statute of limitations provided in Section 205 (e) did not apply to an action under Section 205 (a), as follows:

> The period of limitations provided by Section 205 (e) could have been invoked only as to the recovery sought under that subsection. There is no period of limitation prescribed by subsection [205] (a) and the limitation set in 205 (e) cannot be made applicable to the equitable action under subsection [205] (a).

Nor has any decision been handed down by any other Circuit Court on the particular issue which sustains the District Court holding in this case. Thus, the decision of the lower Court, that the statute of limitations in Section 205 (e) bars restitution in an action brought under 205 (a) of the Act, is contrary to all Federal appellate authority.

The lower Court further manifested its basic misconception of the wholly distinct remedies provided in Section 205 (a) and Section 205 (e) of the Act. After

stating in its oral opinion that the recovery sought was for the benefit of the tenants and that they "could themselves have brought suit" (R. 103), the Court denied restitution to the Expediter stating that "they [the tenants] did not have to wait for the Administrator to bring action" and that they had failed to sue for statutory damages under Section 205 (e) within the one-year period therein provided (R. 105).

As discussed, *supra,* restitution under Section 205 (a) is in no wise limited by the one-year statute of limitations contained in Section 205 (e) of the Act. Equally true is the fact that the right of the Expediter to compel restitution under Section 205 (a) is wholly separate and distinct from the right granted to tenants to recover damages under Section 205 (e). When the Expediter applies for an order of restitution to compel compliance with the Rent Control Act, he seeks the vindication of public rights, not the redress of a private wrong. On the other hand when an aggrieved tenant seeks damages under Section 205 (e), he seeks the vindication of a private right bestowed upon him by the statute, not the redress of a public wrong. "The Administrator acts in the public interest—the purchaser his own. The remedies are not irreconcilable" [10] (*Bowles* v. *Skaggs,* 151 F. 2d 817, 821 (C. C. A. 6)).

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[10] Compare also the reasoning of the Supreme Court in *McComb* v. *Jacksonville Paper Co.*, No. 110, Oct. term, 1948, decided Feb. 14, 1949, 17 L. W. 4200, involving a proceeding by the Administrator of the Fair Labor Standards Act (52 Stat. 1060) to enforce civil contempt. As the Court there stated, "The fact that another suit might be brought [by employees] to collect the payments is, of course, immaterial" (at p. 4201).

Likewise in *Creedon* v. *Randolph, supra,* the Fifth Circuit Court of Appeals repudiated the position of the lower Court in this case, by stating as follows (165 F. 2d at p. 919):

> The remedy invoked under Sec. 205 (a) appertains only to the Administrator as the representative of the Government in the enforcement of this law. That to require restitution of overcharges tends to enforce the law prohibiting them no one would deny. That it operates to confer a benefit on the tenant, who has not seen fit to act in her own behalf, does not detract at all from the enforcement effect nor alter its nature.

To the same effect, *Woods* v. *Schmid,* 164 F. 2d 981 (C. C. A. 5); *Creedon* v. *Evangelista,* 77 F. Supp. 538 (E. D. Pa.).

Moreover, it is well established that even where the beneficiary under a statute designed to vindicate the public interest knew of the violation, recovery from the defendant is not barred (*Rosenberg* v. *Hano,* 121 F. 2d 818, 821 (C. C. A. 3); *Washington & C. Ry. Co.* v. *Mobile & O. R. Co.,* 255 F. 12 (C. C. A. 5); *Lewis* v. *Nailling,* 36 F. Supp. 187 (W. D. Tenn. 1940)). Thus, in *Washington & C. Ry. Co.* v. *Mobile & O. R. Co., supra,* where recovery of an overcharge under the Interstate Commerce Act was sought, it was held that plaintiff's knowledge that its overpayments were in violation of the law, was no bar to recovery. The Court stated (at p. 15):

> Tariffs and divisions would be rendered nugatory, if the interested companies could, by repayments and readjustments of accounts, bring

about any result they might desire as between themselves and connecting lines, or between themselves and shippers.

Since the action authorized under Section 205 (a) of the Act is clearly one to enforce compliance with the Act and to promote the public interest in the maintenance of rent control (*Porter* v. *Warner Holding Co.,* 328 U. S. 395), the failure of the tenants to prosecute their private action under Section 205 (e) of the Act, obviously has no bearing on the suit of the Expediter to enforce compliance under Section 205 (a). Thus, it is clear that neither the statute of limitations under Section 205 (e) nor the failure of the tenants to seek restitution, were a bar to relief under Section 205 (a) in this case.

III

The lower court erred in holding that plaintiff should be denied relief because of its unreasonable delay in filing suit and because of irreparable injury to defendants

In Findings of Fact X, XI, and XIII, the District Court found that plaintiff was guilty of such unreasonable delay, and that defendants had relied thereupon to their irreparable injury, as to be barred by laches from recovery (Findings of Fact X, XI, XIII, R. 44–45.)[11] It is submitted first, that the delay in prose-

[11] X. It is true that plaintiff has been guilty of unreasonable delay in making the charges against defendants and proceeding thereon, and that defendants have been greatly and irreparably injured and harmed thereby.

XI. It is true that plaintiff should be denied relief because of delay and great and irreparable injury to defendants.

XIII. It is true that defendants are not guilty of fraud or concealment, and that plaintiff has been guilty of such delay as would

cuting this suit is directly traceable to defendants' actions and not to plaintiff's inaction; second, that defendants did not rely upon any action or inaction of plaintiff to their irreparable injury; and third, that the Office of the Housing Expediter is not subject to the doctrine of laches.

A. *The evidence in the case clearly demonstrates that any delay involved in prosecuting this suit was occasioned by defendants.*

Defendants filed their original and improper registrations on December 15, 1942 (R. 23, 24). Like millions of other registrations filed in 1942 throughout the United States, that of defendants remained unquestioned in the files. Usually because of the large number of registrations (there are about 15,000,000 housing accommodations under rent control) an improper registration remains undetected until specific occasion arises to examine it. As the District Judge properly pointed out, "The government had a right to assume that anybody who made a registration made an honest registration and it was not until their attention was called to the fact that possibly the registration was incorrect, were they required to act" (R. 104).

The first occasion the government had to question and examine the particular registration occurred as a result of a letter written by defendant, John McCord, some two years after filing thereof. For some unexplained reason he advised plaintiff by letter on

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cause it to be inequitable to make any other order against defendants.

July 12, 1944, that he had been operating under the hotel regulation and requested permission to continue to do so (Plaintiff's Exhibit 3, R. 132). Shortly thereafter, on October 20, 1944, defendant was requested by letter to appear at the Los Angeles Area Rent Office with all data necessary to determine the propriety of his original registration (R. 131). Defendant ignored this notice. Another letter was addressed to defendant on December 6, 1944, by plaintiff enclosing a questionnaire and requesting detailed data as to the rental practices with respect to the premises for the months of June, September, and October 1942 and for the most recent calendar month (R. 130–131). This letter was likewise ignored by defendant. On January 2, 1945, a third letter was sent to defendant requesting the same information and pointing out that "failure to comply with this request will result in a violation for use of the hotel registration without a consent and order granted by the Area Rent Director as required by the Regulations" (R. 129, 130). Although the last letter elicited a reply from defendant, the information submitted was incomplete and on February 16, 1945, a fourth letter was sent to defendant requesting complete data (R. 128, 129). No reply having been forthcoming, a fifth letter was sent by plaintiff on March 13, 1945, as a follow-up (R. 127, 128). A sixth letter was sent to defendant on April 10, 1945, requesting him to call at the Area Rent Office with respect to the premises (R. 127). This, too, was ignored and on May 10, 1945, a seventh letter was sent to defendant seeking the same information requested

in the earlier letters (R. 126). No answer having been received, an eighth letter was sent to defendant on May 26, 1945, as a follow-up (R. 125). Defendant McCord finally responded on June 5, 1945, stating that the requested information would be forwarded by June 8 and expressing his hope "that this unavoidable delay has not in any way jeopardized the case" (R. 124). The requested data was not received by plaintiff by June 8, 1945, or at any other time (R. 120). Since the oft-requested information was not forthcoming from defendant, an inspection was made by plaintiff of the premises and the inspector's report concluded that the premises should have been registered under the housing and not under the hotel regulation (R. 122, 123, 124). On July 31, 1945, plaintiff addressed its ninth letter to defendant advising him that his petition for consent to come under the hotel regulation had been denied and directing him to re-register under the housing regulation (R. 121). Consistent with his conduct for the preceding ten months, no action was forthcoming from defendant. On August 9, 1945, a formal order was issued by the Area Rent Director denying defendant's petition (R. 119).

The foregoing chronology of events speaks for itself. It places the blame for the "unavoidable delay" (R. 124), employing the language of defendant in describing his own actions, squarely in the lap of defendant. But defendant's procrastination did not cease at this point. His failure to supply the data requested of him on eight different occasions was fol-

lowed by his failure to re-register the premises, as directed by plaintiff's letter of July 31, 1945 (R. 121), and as required by the August 9 Order of the Area Rent Director. Consequently, on September 5, 1945, another letter was sent to defendant directing him to re-register the premises (R. 135). This, too, was ignored. Finally, on December 13, 1945, an injunction suit was filed in the Los Angeles Superior Court by plaintiff in order to compel re-registration by defendant (R. 41). Shortly thereafter, on February 14, 1946, defendant registered under the housing regulation (Plaintiff's Exhibit 2, R. 117, 118). In other words, it took the prodding of the Expediter over a period of one and one-half years and a court proceeding to bring about defendant's compliance with the registration requirements of the regulation.

It is submitted that the foregoing chronology of events which occurred prior to the institution of the suit establishes that the delay therein involved was manifestly attributable to defendants' rather than to plaintiff's actions. By their failure to answer the several letters addressed to them seeking information essential to the determination of the propriety of the original registration, by their ignoring of the Area Rent Director's order of August 9, 1945, by their failure over an extended period of time to file an appropriate registration in accordance with the Area Rent Director's order which necessitated the filing of an injunction suit by the Office of Price Administration to compel compliance, defendants successfully prevented the early institution of suit by the Housing

Expediter. It is unconscionable that plaintiff should be penalized for these obstructionist tactics.[12] As this Court stated in *Northern Pac. Ry. Co.* v. *Boyd,* 177 F. 804, affirming 170 F. 779, and affirmed 33 S. Ct. 554, 228 U. S. 482 (at p. 824), "Where the party interposing a defense of laches has contributed to or caused the delay, he cannot take advantage of it. 5 Pomeroy's Eq. Jur. § 35." To the same effect, *Spiller* v. *St. Louis & S. F. R. Co.,* 14 F. 2d 284, 288 (C. C. A. 8), reversing 288 F. 612, and certiorari granted 47 S. Ct. 111, 273 U. S. 680, affirmed in part and reversed in part 47 S. Ct. 635, 274 U. S. 304.

B. *Defendants did not rely upon any action or inaction of plaintiff to their irreparable injury, but any injury sustained by them was self-inflicted.*

As discussed *supra,* any delay involved in prosecuting this suit is directly traceable to defendants' actions and not to plaintiff's inaction. Thus, the first prerequisite of laches is not present in the case. In addition, defendants cannot satisfy the second requirement which must be met if the equitable doctrine of laches is to obtain. This condition precedent to the application of the defense of laches was expressed by

[12] The considerations underlying the decision in *Woods* v. *Stone, supra,* where effect was given to the retroactive orders to prevent a landlord from benefiting from his own delay or inaction in filing a registration, applies with equal force here where appellants filed an improper registration. See also, similar rule applied where retroactive orders were issued in cases involving commodities for which price schedules were filed unseasonably (*Porter* v. *Senderowitz,* 158 F. 2d 435 (C. C. A. 3), certiorari denied, 330 U. S. 848; *Porter* v. *Kramer,* 156 F. 2d 687 (C. C. A. 8); *Martini* v. *Porter,* 157 F. 2d 35 (C. C. A. 9), certiorari denied, 330 U. S. 848; *Porter* v. *Eastern Sugar Associates,* 159 F. 2d 299 (C. C. A. 4)).

this Court in *London & San Francisco Bank* v. *Dexter Horton & Co.,* 126 F. 593 (C. C. A. 9), certiorari denied 24 S. Ct. 856, 194 U. S. 631, as follows (at p. 601):

> No hard and fast rule has been laid down by the courts which can be said to govern all cases wherein the defense of laches is invoked. The lapse of time which might induce the application of the doctrine is not a determined period, but depends upon the circumstances of the particular case. One principle pervades all cases involving the defense of laches, however, and that is, that not only must there be a seemingly unnecessary delay on the part of the plaintiff in bringing or prosecuting his action, but that, by reason of some change in the condition or relations of the property or parties occurring during the period of delay, it would be inequitable to permit the claim of the plaintiff to be enforced. *Galliher* v. *Cadwell,* 145 U. S. 368, 12 Sup. Ct. 873, 36 L. Ed. 738; *Halstead* v. *Grinnan,* 152 U. S. 412, 14 Sup. Ct. 641, 38 L. Ed. 495; *Wheeling Bridge & T. Co.* v. *Reymann Brewing Co.,* 61 U. S. App. 531, 90 Fed. 189, 32 C. C. A. 571.

It is submitted that there was no change in condition or position suffered by defendants between the dates of the filing of the original registration in 1942 and the institution of this suit in 1947, which would render inequitable the enforcement of plaintiff's claim.

Certainly, as the District Court pointed out (R. 104), during the period from December 15, 1942, the date of first filing, and July 12, 1944, the first occasion plaintiff had to question the registration, plain-

tiff "had a right to assume that anybody who made a registration made an honest registration" (R. 104). Moreover, the complaint alleges and plaintiff seeks only to recover for excessive rents collected during the minor portion of this period (See Schedule of Overcharges, Appendix, *infra,* p. 36).

In the period that followed, from July 12, 1944, until plaintiff filed suit in March 1947, plaintiff certainly did not sleep on its rights nor take any action which would make recovery inequitable. It is abundantly clear from the record, as discussed *supra,* that every effort was expended by plaintiff during this period in obtaining the data, peculiarly within defendants' knowledge, necessary to determine the propriety of the original registration. It is equally clear that during this period defendant successfully withheld the requisite information, whether intentionally or otherwise, and never did submit it. Moreover, even after defendants' petition was denied by the order of the Area Rent Director, and they were directed to re-register the premises, it required a Court action to obtain re-registration (R. 141).

Implicit in defendants' request, contained in their letter of July 12, 1944, for permission to continue to operate under the hotel regulation, is the fact that until such request was granted they were operating at their peril. When we add to this proposition, the fact that defendants were solely responsible for any delay involved in the ultimate denial of their petition, their culpability is even more apparent. Finally, after they had been formally apprised of the denial of their request to come under the hotel regula-

tion, on August 9, 1945 (R. 119), as they had been earlier informally advised (R. 121), defendants wilfully ignored the order of the Area Rent Director and continued to charge the excessive rentals specified in their first improper registration. This last fact should dispel any doubt as to the reliance which defendants placed upon any action or inaction of the Expediter in this case. The fact is, as must be clear from the discussion above, that defendants misconduct was wholly independent of and not explainable in terms of anything the Expediter did or failed to do. Manifestly, then, the return of the illegal sums collected in such blatant disregard of the law can hardly be described as inequitable. "Appellant was not entitled to receive the amount of the overcharge in the first place and he may not now retain it on the ground of estoppal", *Diven* v. *Porter,* 157 F. 2d 593 (C. C. A. 8). To the same effect: *Shyman* v. *Fleming, supra; Kessler* v. *Fleming,* 163 F. 2d 464 (C. C. A. 9). The principle expressed above, even though in a suit under Section 205 (e) of the Act, has equal application in a suit under Section 205 (a).

With the foregoing facts in mind, it is difficult to follow the reasoning of the Court below in denying restitution of the overcharges on the basis of a change in possession and the payment of income taxes (R. 105). While the sale of the premises would be relevant on an issue such as injunctive relief, it is hardly relevant to the issue of restoration of overcharges admittedly collected; nor does it appear that the payment of income taxes, upon the facts, merits retention by defendants of their ill-gotten gains. If this were

true, the larger the amounts of the overcharges and consequently, the larger the income tax payments, the greater the equities in favor of their retention by the violator. And, in the same vein, the longer that a violator such as here, could successfully conceal the true facts and withhold necessary information from the Expediter, or "the more grievous the wrong done, the less likelihood there would be of recovery" (*Bigelow* v. *RKO Radio Pictures, Inc.*, 327 U. S. at p. 265).

Thus, the decision below solicits misinformation, non-compliance with the lawful requests of the Expediter and severely impairs the right of restitution to the tenants of rent overcharges as an arm of compliance. The importance of the latter cannot be minimized as the decision of the Supreme Court in *Porter* v. *Warner Holding Company, supra,* fully brought out. After stating that an order for the recovery and restitution of illegal rents may be considered a proper "other order," within the meaning of Section 205 (a) of the 1942 Act, on either of two theories, the first of which is as an equitable adjunct to an injunction decree, the Supreme Court set forth the second theory as follows (at p. 400):

> It may be considered as an order appropriate and necessary to enforce compliance with the Act. * * * In framing such remedies under § 205 (a), courts must act primarily to effectuate the policy of the Emergency Price Control Act and to protect the public interests involved. * * * Future compliance may be more definitely assured if one is compelled to restore one's illegal gains; and the statutory policy of preventing inflation is plainly ad-

> vanced if prices or rents which have been collected in the past are reduced to their legal maximums.

It is clear that the denial of restitution by the District Court wholly deprives the Expediter of the opportunity to enforce compliance by refusing to compel restoration of the status quo.

The lack of soundness in the exercise by the District Court of its discretion in denying restitution is further demonstrated by testing the Court's action against the established equitable maxim that a wrongdoer may not benefit from his own wrong (see e. g., *Bigelow* v. *RKO Radio Pictures, Inc., supra; R. H. Stearns Co.* v. *United States,* 291 U. S. 54; *Woods* v. *Stone, supra*). In seeking restitution to the tenant of the full amount of the overcharges, plaintiff "asks the Court to act in the public interest by restoring the status quo and ordering the return of that which rightfully belongs to the purchaser or tenant" (*Porter* v. *Warner Holding Company, supra*). Yet despite the defendants' admission of violations, the District Court's judgment permits defendants to retain all of the fruits of their violation. "But the landlord is not allowed thus to profit from his own disobedience of the law" (*Woods* v. *Stone,* 333 U. S. at p. 475; see: *United States* v. *Paramount Pictures,* 334 U. S. 131 at p. 171; see also: *Schine Chain Theatres* v. *United States,* 334 U. S. 110).

C. *Contrary to the holding below, the Housing Expediter is not subject to laches.*

It is well settled that laches is not imputable to the United States in a suit where the Government is en-

forcing or vindicating the public interest (*United States* v. *Beebe,* 127 U. S. 338, 342; *San Pedro, etc. Co.* v. *United States,* 146 U. S. 120; *United States* v. *Van Zandt,* 24 U. S. 184; see *United States* v. *Summerlin,* 310 U. S. 414, 416; *Ches. & Del. Canal Co.* v. *United States,* 250 U. S. 113, 125, and cases there cited: *Iowa* v. *Carr,* 191 Fed. 257 (C. C. A. 8); *Creedon* v. *Evangelista, supra;* cf. *Lola Electric Co.* v. *Jefferson Electric Co.,* 317 U. S. 173). Since a suit by the Expediter is for all purposes a suit on behalf of the United States,[13] the doctrine of laches has no place in this case.

CONCLUSION

The judgment should be reversed and the Court below directed to enter judgment as prayed for in the complaint.

Respectfully submitted.

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[13] *United States* v. *Koike,* 164 F. 2d 155 (C. C. A. 9); *Fleming* v. *Findlay,* 165 F. 2d 79 (C. C. A. 9); *Fleming* v. *Goodwin,* 165 F. 2d 334 (C. C. A. 8).

APPENDIX

1. Emergency Price Control Act of 1942, as amended (50 U. S. C. App. 901, et seq.):

SEC. 4 (a). It shall be unlawful, regardless of any contract, agreement, lease, or other obligation heretofore or hereafter entered into, for any person to sell or deliver any commodity, or in the course of trade or business to buy or receive any commodity, or to demand or receive any rent for any defense-area housing accommodations, or otherwise to do or omit to do any act, in violation of any regulation or order under section 2, or of any price schedule effective in accordance with the provisions of section 206, or of any regulation, order, or requirement under section 202 (b) or section 205 (f), or to offer, solicit, attempt, or agree to do any of the foregoing.

SEC. 205 (a). Whenever in the judgment of the Administrator any person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of section 4 of this Act, he may make application to the appropriate court for an order enjoining such acts or practices, or for an order enforcing compliance with such provision, and upon a showing by the Administrator that such person has engaged or is about to engage in any such acts or practices a permanent or temporary injunction, restraining order, or other order shall be granted without bond.

SEC. 205 (e). If any person selling a commodity violates a regulation, order, or price schedule prescribing a maximum price or maximum prices, the person who buys such commodity for use or consumption other than in the

course of trade or business may, within one year from the date of the occurrence of the violation, except as hereinafter provided, bring an action against the seller on account of the overcharge. In any action under this subsection, the seller shall be liable for reasonable attorney's fees and costs as determined by the court, plus whichever of the following sums is greater: (1) Such amount not more than three times the amount of the overcharge, or the overcharges, upon which the action is based as the court in its discretion may determine, or (2) an amount not less than $25 nor more than $50, as the court in its discretion may determine: *Provided, however,* That such amount shall be the amount of the overcharge or overcharges if the defendant proves that the violation of the regulation, order, or price schedule in question was neither willful nor the result of failure to take practicable precautions against the occurrence of the violation.

For the purposes of this section the payment or receipt of rent for defense-area housing accommodations shall be deemed the buying or selling of a commodity, as the case may be; and the word "overcharge" shall mean the amount by which the consideration exceeds the applicable maximum price. If any person selling a commodity violates a regulation, order, or price schedule prescribing a maximum price or maximum prices, and the buyer either fails to institute an action under this subsection within thirty days from the date of the occurrence of the violation or is not entitled for any reason to bring the action, the Administrator may institute such action on behalf of the United States within such one-year period. * * *

2. Maximum Rent Regulation 53 (Vol. 7, No. 210 Fed. Reg. at p. 8596 (Oct. 24, 1942):

SEC. 1388.281. *Scope of regulation.*—(a) This Maximum Rent Regulation No. 53 applies to

all housing accommodations within each of the following Defense-Rental Areas (each of which is referred to hereinafter in this Maximum Rent Regulation as the "Defense-Rental Area"), as designated in the designations and rent declarations (§§ 1388.1201 to 1388.1205, 1388.1251 to 1388.1255, 1388.1301 to 1388.1305, 1388.1311 to 1388.1315, 1388.1321 to 1388.1325, and 1388.1331 to 1388.1335, inclusive) issued by the Administrator on April 28, 1942, as amended, on May 26, 1942, on June 3, 1942, on June 26, 1942, on July 29, 1942, and on August 13, 1942, except as provided in paragraph (b) of this section.

SEC. 1388.281. (b) This Maximum Rent Regulation does not apply to the following:

(3) Rooms or other housing accommodations within hotels or rooming houses, or housing accommodations which have been, with the consent of the Administrator, brought under the control of the Maximum Rent Regulation for Hotels and Rooming Houses pursuant to the provisions of that regulation: *Provided,* That this Maximum Rent Regulation does apply to entire structures or premises though used as hotels or rooming houses.

SEC. 1388.284. *Maximum rents.*—Maximum rents (unless and until changed by the Administrator as provided in § 1388.285) shall be:

(a) For housing accommodations rented on March 1, 1942, the rent for such accommodations on that date .

SEC. 1388.293. *Definitions.*—(a) When used in this Maximum Rent Regulation No. 53:

(11) The term "hotel" means any establishment generally recognized as such in its community, containing more than 50 rooms and used predominantly for transient occupancy.

(12) The term "rooming house" means, in addition to its customary usage, a building or portion of a building other than a hotel in which a furnished room or rooms not constitut-

ing an apartment are rented on a short time basis of daily, weekly, or monthly occupancy to more than two paying tenants not members of the landlord's immediate family. The term includes boarding houses, dormitories, auto camps, trailers, residence clubs, tourist homes or cabins, and all other establishments of a similar nature.

3. Rent Regulation for Housing (10 F. R. 13528):

SEC. 1. *Scope of this regulation*—(a) *Housing and defense-rental areas to which this regulation applies.*—This regulation applies to all housing accommodations within each of the defense-rental areas and each of the portions of a defense-rental area (each of which is referred to hereinafter in this regulation as the "defense-rental area"), which are listed in Schedule A of this regulation, except as provided in paragraph (b) of this section.

In Schedule A "the maximum rent date" and "the effective date of regulation" is given for each defense-rental area listed. More than one effective date is given for different portions of a defense-rental area where the same effective date is not applicable to the entire defense-rental area. Wherever the words "the maximum rent date" or the words "the effective date of regulation" are referred to in this regulation, the dates given in Schedule A for the particular defense-rental area or portion of the defense-rental area in which the housing accommodations are located shall apply. The effective date listed in Schedule A in each instance is the date rent regulation was effective in the particular defense-rental area or portion of the defense-rental area.

(b) *Housing to which this regulation does not apply.*—This regulation does not apply to the following:

(3) *Rooms in hotels, rooming houses, etc.*—Rooms or other housing accommodations within

hotels or rooming houses, or housing accommodations which have been, with the consent of the Administrator, brought under the control of the Rent Regulation for Hotels and Rooming Houses pursuant to the provisions of that regulation.

SEC. 4. *Maximum rents.*—Maximum rents (unless and until changed by the Administrator as provided in section 5) shall be:

(a) *Rented on maximum rent date.*—For housing accommodations rented on the maximum rent date, the rent for such accommodations on that date.

SEC. 13. *Definitions.*—(a) When used in this regulation the term:

(11) "Hotel" means any establishment generally recognized as such in its community containing more than 50 rooms and used predominantly for transient occupancy.

(12) "Rooming house" means, in addition to its customary usage, a building or portion of a building other than a hotel in which a furnished room or rooms not constituting an apartment are rented on a short-time basis of daily, weekly, or monthly occupancy to more than two paying tenants not members of the landlord's immediate family. The term includes boarding houses, dormitories, auto camps, trailers, residence clubs, tourist homes or cabins, and all other establishments of a similar nature.

4. Controlled Housing Rent Regulation (12 F. R. 4331):

SEC. 825.4. *Maximum rents*—(a) *Maximum rents in effect on June 30, 1947.*—The maximum rent for any housing accommodation under §§ 825.1 to 825.12, inclusive (unless and until changed by the Expediter as provided in § 825.5) shall be the maximum rent which was in effect on June 30, 1947, as established under the Emergency Price Control Act of 1942, as

amended, and the applicable rent regulation issued thereunder, except as otherwise provided in this section.

5. Revised Procedural Regulation 3 (8 F. R. 526, 9 F. R. 1656):

SEC. 1300.209. *Applications for review.*—(a) Any landlord whose petition for adjustment or other relief has been dismissed or denied in whole or in part by the rent director, or any landlord subject to an order entered by the rent director on his own initiative, may within a period of sixty days after the date of issuance of such determination, regardless of the effective date thereof, file with the rent director an application for review of such determination by the regional administrator for the region in which the defense-rental area office is located: *Provided,* That any landlord subject to an order entered under section 5 (d) of any maximum rent regulation or subject to an order entered by the rent director under § 1300.207 of this regulation, may either apply for review of such order as provided in this section, or may protest any provision of such order as provided in §§ 1300.215 to 1300.223, inclusive, of this regulation. An application for review shall be filed in triplicate upon forms prescribed by the Administrator and pursuant to instructions stated on such forms. Upon the filing of an application for review of such determination, the rent director shall forward the record of the proceedings with respect to which such application is filed to the appropriate regional administrator.

SEC. 1300.215. *Right to protest.*—Any landlord subject to any provision of a maximum rent regulation, or of an order issued under § 1300.210 of this regulation, or of an order entered under section 5 (d) of any maximum rent regulation, or of an order entered by the rent director under § 1300.207 of this regula-

tion, may file a protest in the manner set forth below. A landlord is, for the purposes of this regulation, subject to a provision of a maximum rent regulation or of an order only if such provision prohibits or requires action by him. Any protest filed by a landlord not subject to the provision protested, or otherwise not in accordance with the requirements of this regulation, may be dismissed by the Administrator.

Schedule of overcharges

Unit	Name of tenant	Legal maximum rent	Amount paid	Period of overcharge commencing	Amount of overcharge
		Per month	*Per week*		
205	Mary E. O'Shea	$32.50	$10.00	8-15-45, for 31 weeks (to 3-20-46)	$79.50
*207	H. Herrmann	45.00	15.00	10-1-43, for 132 weeks	*608.52
208	W. R. Campbell	7.00	10.00	4-10-45, for 49 weeks (to 3-18-46)	147.00
*210	Allen D. Bull	55.00	25.00	1-7-44, for 16 weeks	*196.80
*210	Allen D. Bull	55.00	22.50	4-28-44, for 99 weeks	*970.20
216	M. Louisa Riley	55.00	20.00	10-24-45, for 13 weeks (to 1-24-46)	94.90
217	J. M. Reardon	32.50	10.00	8-3-45, for 33 weeks (to 3-23-46)	82.50
*304	M. P. Anderson	35.00	10.00	8-24-45, for 30 weeks	*55.00
305	Nettie G. Johnson, Adelyn Fredrickson	35.00	10.00	12-2-43, for 120 weeks (to 3-22-46)	218.40
312	Andrew P. M. Weir	35.00	12.50	10-28-44, for 72 weeks (to 3-15-46)	318.24
315	Maxine Scarlett, Adelyn Frederickson	35.00	10.00	10-14-44, for 74 weeks (to 3-15-46)	142.08
405	Catherine Carroll	35.00	10.00	3-27-45, for 51 weeks (to 3-19-46)	97.73
*407	Fern Boltz	50.00	18.00	8-15-44, for 83 weeks	*535.35
411	Nettie Simms, Janice Erickson	37.50	12.50	10-16-44, for 74 weeks (to 3-17-46)	284.16
505	Norma G. Sessums	32.50	40.00	9-14-44, for 13 months (to 10-14-45)	97.50
505	Mrs. J. Northledge	32.50	10.00	10-20-45, for 21 weeks (to 3-17-46)	52.50
507	George F. Corbett	50.00	20.00	2-9-46, for 5 weeks (to 3-16-46)	42.25
$510	Eileen J. Mcloy	50.00	22.50	2-15-44, for 83 weeks	*908.85
*511	H. H. Tubbs	35.00	10.00	9-16-44, for 78 weeks	*149.76
605	Mariah K. Sutherland, Marie Knapp	35.00	10.00	6-30-44, for 80 weeks (to 1-20-46)	153.60
615	J. B. Fordyce	37.50	12.50	9-28-44, for 77 weeks (to 3-20-46)	295.68
	Total				5,530.72

*No longer in issue in this suit on basis of refund of overcharges by defendants to tenant.

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